

**United States Department of Labor
Employees' Compensation Appeals Board**

L.E., claiming as widow of P.E., Appellant

and

**DEPARTMENT OF THE AIR FORCE,
KIRTLAND AIR FORCE BASE, NM, Employer**

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**Docket No. 08-1858
Issued: May 5, 2009**

Appearances:

Gordon Reiselt, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 24, 2008 appellant filed a timely appeal from a June 5, 2008 decision of the Office of Workers' Compensation Programs denying her claim for death benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that the employee's death on May 25, 2005 was causally related to his accepted back injuries.

FACTUAL HISTORY

The Office accepted that on March 9, 1989 the employee, then a 35-year-old supply clerk, sustained a lumbar strain while engaged in refueling operations. It also accepted June 28, 1996 lumbar and thoracic strains and a herniated L5-S1 disc. The employee received compensation on the daily rolls. He received compensation for temporary total disability on the periodic rolls beginning July 17, 1999. The employee underwent L5-S1 lumbar fusion on September 1, 1999. He underwent a second L5-S1 fusion on August 17, 2000.

Beginning in November 2000, the employee was treated for alcoholism, opiate dependence, marijuana dependence, recurrent major depression and a pain disorder. The Office did not accept these conditions as occupationally related.

Dr. Jonathan Burg, an attending Board-certified physiatrist, submitted reports from May 2002 to April 2004 diagnosing depression due to pain. He also noted that the employee's blood glucose was poorly controlled. Dr. Burg prescribed multiple narcotic medications.

Dr. Thomas Whalen, an attending physician Board-certified in internal medicine and anesthesiology, treated the employee from September 2003 to May 2005 for continuing lumbar pain. He noted that the employee's insulin-dependent diabetes was poorly controlled.

The employee died on May 25, 2005.¹ He received compensation on the periodic rolls until his death.

On June 14, 2005 appellant filed a claim for death benefits (Form CA-5). She asserted that the employee's accepted back injuries caused depression, substance abuse, and a worsening of his diabetes culminating in heart failure and death.²

In an October 7, 2005 report, Dr. Whalen opined that the employee's alcohol abuse and reduced physical activity after the accepted injuries both worsened his diabetes. He noted that the employee's noncompliance with treatment plans was a considerable factor in his death. Dr. Whalen explained that he could not determine whether the employee's "work[-]related injury rather than his alcoholism ... contributed to his death." He also opined that the employee's alcoholism "predated his work injury. Dr. Whalen work injury did not cause his alcoholism."

By decision issued June 5, 2008, the Office denied appellant's claim for death benefits on the grounds that causal relationship was not established.

LEGAL PRECEDENT

The United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.³

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his employment. This burden includes the necessity of furnishing rationalized medical opinion evidence showing causal relationship between the accepted employment condition and the employee's death. The opinion must be one of reasonable medical certainty and must be supported by medical rationale.⁴ To be considered rationalized medical evidence, the opinion of the physician must be

¹ The employee's death certificate is not of record. Appellant reported the date of death to the Office by telephone.

² Appellant also submitted correspondence from her attorney and elected representatives.

³ 5 U.S.C. § 8102(a); *see id.* at § 8133 (compensation in case of death).

⁴ *L.R., claiming as widow of E.R.*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007).

based on a complete and accurate factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by adequate medical discussion explaining the causal relationship between employment factors and the employee's death.⁵ The mere showing that an employee was receiving compensation at the time of his death does not establish that his death was causally related to conditions resulting from the employment.⁶

ANALYSIS

Appellant claimed that the employee's death on May 25, 2005 was causally related to his accepted back injuries. She submitted an October 7, 2005 report from Dr. Whalen, the employee's Board-certified internist, who opined that the employee's noncompliance and nonoccupational alcohol abuse were factors in his death. Dr. Whalen addressed a reduced functional capacity after the accepted injuries which contributed to the worsening of the employee's diabetes. However, he did not provide medical rationale explaining how and why any reduced physical activity following treatment of appellant's accepted back condition would worsen the employee's diabetes or contribute to his demise. Without such rationale, Dr. Whalen's opinion is insufficient to establish causal relationship in this case.⁷ Appellant did not submit any other medical evidence addressing the employee's cause of death. The Board finds that she failed to meet her burden of proof, as she submitted insufficient rationalized medical evidence to establish a causal relationship between the employee's accepted back injuries and his death.

CONCLUSION

The Board finds that appellant has not established that the employee's death on May 25, 2005 was causally related to his accepted back injuries.

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁶ *Leonora A. Buco (Guido Buco)*, 36 ECAB 588, 594 (1985).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2008 is affirmed.

Issued: May 5, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board